IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 570 OF 2004

Mr. Anil Suraj Prakash Kapur. ...Petitioner.
Vs.
Vintage Cards Ltd. ...Company.

Mr. Subhash Joshi for the Petitioner.
None for the Respondent.

CORAM : A.M. KHANWILKAR, J.
DATED : 9/6/2005

P.C.:

1. Heard learned counsel for the petitioner. Perused the pleadings filed by the respective parties. None appears for the company though served and has also entered appearance and also filed reply.

2. This petition is filed for initiating action against the company under Section-433 and 434 of the Companies Act,1956 as the company is unable to pay the dues. The case of the petitioner is that the petitioner offered unsecured loan in the sum of Rs.90,00,000/- to the company. The company has paid interest on the said amount to the petitioner till 1.1.2003 but has stopped making payment of interest nor repaid the principal amount so far.

3. Going by the assertions made in the petition, prima facie it appears that the company has failed to pay the outstanding dues and perhaps it is unable to pay its debt to the unsecured creditors. However, on perusal of the reply affidavit, it is seen that the company had taken corporate loan from Bank of India to the extent of Rs.2,00,00,000/-.That credit facility was extended to the company on the assurance given by the company under the signature of the Managing Director that the company will not pay interest on unsecured loans more than interest charged by the Bank of India and will not pay unsecured credit for Rs.180/- Crores. This undertaking is given by the company to which the petitioner and Rajesh Vaishnav are also signatories.

4. It is the case of the company that becuase of the said undertaking dated 15.12.2000 the company was not in a position to repay the unsecured loan or interest thereon. Besides, the correspondence placed on record alongwith reply affidavit, it is seen that the company had offered equity shares to the promoters, in lieu of above part settlement of unsecured loan. That offer was also given to the petitioner. The petitioner’s case is that the offer

made by the company by letter dated 2.3.2005 was received by the petitioner much after the last date to convey the acceptance was over. That grievance was placed on record by the petitioner by letter dated 24.7.2003. It is however, stated on affidavit by the company that, on receipt of the said letter from the petitioner on 24.7.2003, the company gave one more offer to the petitioner regarding preferential allotment of the equity shares in lieu of unsecured loan extended by the petitioner. However, the petitioner has not accepted the said offer till date. Besides that, it is stated in the reply affidavit that, the company is discharging financial obligation in so far as other outstanding dues are concerned. It appears that some deliberations are going on between the petitioner and the company but so far the petitioner has not finally accepted the offer regarding the preferential allotment of equity shares in lieu of unsecured loan. Besides, the reply affidavit states that the company is in the midst of a scheme of restructuring and is in consultation with statutory auditors, management consultants and advocates so as to expand its business.

5. Taking over all view of the matter, I am of the

view that, it is not that the company is unable to pay its debt but because of commercial compulsions and more particularly, because of the undertaking, to which the petitioner was also signatory, namely the assurance given to the Bank of India, unsecured loan extended by the petitioner has not been repaid so far. Accordingly, I see no reason to admit this petition. Hence, petition dismissed.

(A.M. KHANWILKAR,J.)